

**United States District Court**

For the Northern District of California

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10 *In re Malibu Media Copyright*  
11 *Infringement Litigation*

No. C 15-04112 WHA  
No. C 15-04159 WHA  
No. C 15-04170 WHA  
No. C 15-04287 WHA  
No. C 15-04289 WHA  
No. C 15-04291 WHA  
No. C 15-04441 WHA  
No. C 15-05383 WHA  
No. C 15-05384 WHA  
No. C 15-05385 WHA  
No. C 15-05386 WHA  
No. C 15-05387 WHA  
No. C 15-05388 WHA  
No. C 15-05389 WHA  
No. C 15-05391 WHA  
No. C 15-05395 WHA  
No. C 15-05396 WHA  
No. C 15-05397 WHA  
No. C 15-05398 WHA  
No. C 15-05399 WHA  
No. C 15-05400 WHA  
No. C 15-05401 WHA  
No. C 15-05402 WHA  
No. C 15-05403 WHA  
No. C 15-05404 WHA  
No. C 15-05406 WHA  
No. C 15-05408 WHA  
No. C 15-05409 WHA  
No. C 15-05410 WHA  
No. C 15-05411 WHA  
No. C 15-05412 WHA  
No. C 15-05413 WHA  
No. C 15-06060 WHA  
No. C 15-06062 WHA  
No. C 15-06063 WHA  
No. C 15-06064 WHA  
No. C 15-06065 WHA  
No. C 15-06066 WHA  
No. C 15-06067 WHA

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1 No. C 15-06068 WHA  
2 No. C 15-06069 WHA  
3 No. C 15-06070 WHA  
4 No. C 15-06071 WHA  
5 No. C 15-06072 WHA  
6 No. C 15-06073 WHA  
7 No. C 15-06074 WHA  
8 No. C 15-06075 WHA  
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10 **ORDER RE PLAINTIFF'S  
PROPOSED PROCEDURE FOR  
EFFECTUATING SERVICE**

11 Plaintiff Malibu Media, LLC, has filed 116 copyright infringement actions in this  
12 district. All of Malibu Media's actions have been reassigned to the undersigned judge. Malibu  
13 Media has encountered difficulty effectuating service by the deadline set by Rule 4(m), which  
14 has resulted in repeated requests for extensions and, in four cases, dismissal for failure to timely  
15 serve the defendants (after two extensions had already been granted). Accordingly, Malibu  
16 Media filed a request in Case No. 15-4287 proposing that the undersigned judge issue a  
17 standing order extending the deadline to effectuate service to fifty-five days from the date on  
18 which it receives the defendant's identifying information from his or her Internet provider for  
19 all pending cases. Counsel for Malibu Media appeared for a hearing to discuss this proposal on  
February 23.

20 As a matter of course, the deadline to effectuate service has been extended to at least  
21 twenty-eight days from the date on which Malibu Media received the defendant's identifying  
22 information. Two extensions of two weeks each have been granted upon request and a showing  
23 of good cause. In one case, the deadline was extended a third time where the defendant  
24 appeared to be dodging service.

25 Malibu Media explains that the initial twenty-eight days does not offer sufficient time to  
26 effectuate service, inasmuch as it takes twenty days from the date on which it receives a given  
27 defendant's identifying information before it can deliver the necessary documents and  
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1 instructions to a process server. Specifically, Malibu Media outlines the following procedure  
2 that it follows upon receipt of a defendant's identifying information:

- 3     ● Malibu Media conducts an investigation, typically lasting **THREE**  
4         **DAYS**, to determine whether it will pursue its claims against the  
5         subscriber identified or a third party using that subscriber's Internet  
6         connection.
- 7     ● Once Malibu Media decides to pursue claims against a defendant, it  
8         takes **THREE DAYS** to prepare and file a proposed summons,  
9         amended complaint, return of service, and a motion to file those  
10         documents under seal.
- 11     ● Malibu Media's sealing motion is granted within **ONE DAY**.
- 12     ● The summons issues between **TWO AND SIX DAYS** after the sealing  
13         motion is granted.
- 14     ● Malibu Media receives the unredacted summons by mail **FOUR TO**  
15         **TEN DAYS** after it issues.
- 16     ● Malibu Media spends **ONE DAY** reviewing the relevant documents  
17         before delivering them to its process server.

18              In light of this time-consuming procedure, Malibu Media seeks to alleviate the  
19         administrative burden of repeatedly requesting extensions; however, Malibu Media exaggerates  
20         the timeline of its procedure.

21              *First*, Malibu Media offers no explanation for why it needs three days to prepare and file  
22         its proposed summons, amended complaint, return of service, and sealing motion. The  
23         preparation of those documents involves little more than adding the defendant's identifying  
24         information to documents that Malibu Media had already created before receiving that  
25         information. Even if Malibu Media actually needed three days to prepare those documents  
26         (plus three to conduct its investigation), it generally files its sealing motions more than ten days  
27         after receiving defendants' identifying information.

28              *Second*, in no case has the summons issued more than one day after Malibu Media's  
29         sealing motion is granted.

30              *Third*, as noted in the orders dismissing four of Malibu Media's cases (Case Nos. 15-  
31         4246, 15-4248, 15-4280, and 15-4430), and as discussed at the hearing on this request, Malibu  
32         Media's lead counsel (who are based in Los Angeles) or local associated counsel, may retrieve  
33         the summons from the court's docket page.

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1 any unredacted summonses in person at the Clerk's office on the 16th floor of 450 Golden Gate  
2 Ave., San Francisco. Thus, any delay caused by the mailing of unredacted summonses is easily  
3 avoided.

4 Accordingly, Malibu Media only needs eight to ten days from the date it receives a  
5 defendant's identifying information before it can deliver the relevant documents and  
6 instructions to its process server. Nevertheless, notwithstanding the deadline set by Rule 4(m),  
7 Malibu Media shall have thirty-five days from the date on which it receives the defendant's  
8 identifying information from the his or her Internet service effectuate service.

9 Requests for extensions beyond thirty-five days (or beyond the deadline set by Rule  
10 4(m) if longer than thirty-five days) will be decided on a case-by-case basis and must be  
11 supported by good cause. Any such request should be made immediately as circumstances  
12 justifying the extension arise, rather than at the last minute. Malibu Media must support any  
13 assertion that a defendant is dodging service with an affidavit of non-service (to be filed under  
14 seal, with the defendant's identifying information redacted on the public docket).

15 In order to better track deadlines, Malibu Media shall please file a notice informing the  
16 Court of the date on which it received the defendant's identifying information no later than **FIVE**  
17 **CALENDAR DAYS** after receiving that information.

18 This order shall be filed in every pending Malibu Media case in this district in which the  
19 defendant has not yet been served. As discussed at the hearing, Malibu Media shall please file  
20 the transcript of the February 23 hearing in each of the above-captioned matters.  
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22 **IT IS SO ORDERED.**

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24 Dated: February 23, 2016.

  
25 WILLIAM ALSUP  
26 UNITED STATES DISTRICT JUDGE  
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